

REMARKS

1. Claims 1, 15-17 and 21-34 were pending. Of these claims 1, 15, 16, 21-23, and 25-34 stand rejected, claims 17 and 24 stand objected to. This communication amends claims 1, 15, 25 and 29; cancels claims 16, 17, 23 and 24; and adds claims 35 and 36.
2. It is noted that prosecution has been reopened in view of the appeal brief filed on October 4, 2004, and new grounds for rejection have been made in the present Office Action.
3. It is further noted that objected to claims 17 and 24 contain allowable subject matter. In response, claim 15 has been amended to contain the subject matter of claim 17 and intervening claim 16; and claim 1 has been amended to contain the subject matter of claim 24 and intervening claim 23.
4. Claims 1, 15, 16, 23, 25 and 29 stand rejected under 35 USC 102(e) as being anticipated by U.S. Patent 6,030,390 to Mehdizadeh.

This rejection is moot as independent claims 1 and 15 have been amended to contain the allowable subject matter of respective claims 24 and 17. In view of the foregoing, withdrawal of the 35 USC 102(e) rejection using Mehdizadeh is respectfully requested.
4. Claims 21, 22 and 26-34 stand rejected under 35 USC 103(a) as being unpatentable over Mehdizadeh in view of U.S. Patent 6,648,895 to Burkus *et al.* (Burkus).

This rejection is moot as independent claims 1 and 15 have been amended to contain the allowable subject matter of respective claims 24 and 17. In view of the foregoing, withdrawal of the 35 USC 103(a) rejection using Mehdizadeh in view of Burkus is respectfully requested.

5. New claims 35 and 36 recite indicia for indicating a dimension of the distractor.

Specifically, claim 35 recites:

The instrument system according to claim 1, further comprising indicia for indicating a dimension of the at least one distractor, the indicia provided by at least one of the walls of the first and second pairs of opposing walls.

Claim 36 recites:

The distractor according to claim 15, further comprising indicia for indicating a dimension of the distractor, the indicia provided by at least one of the walls of the first and second pairs of opposing walls.

Support for the subject matter of claims 35 and 36 can be found on page 6, paragraph [0030] of the originally filed specification. Accordingly, claims 35 and 36 do not add new matter to the application.

6. Favorable reconsideration of this application is respectfully requested as it is believed that all outstanding issues have been addressed herein and, further, that claims 1, 15, and 21-22 and 25-36 are in condition for allowance, early notification of which is earnestly solicited. Should there be any questions or matters whose resolution may be advanced by a telephone call,

the examiner is cordially invited to contact applicants' undersigned attorney at his number listed below.

7. No fee is believed to be required for this communication. The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17, which are associated with this communication, or credit any overpayment to Deposit Account No. 50-2061.

Respectfully submitted,



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